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COMMITTEE ON ECONOMIC, SOCIAL
AND CULTURAL RIGHTS

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER
ARTICLES 16 AND 17 OF THE COVENANT

Concluding observations of the Committee on
Economic, Social and Cultural rights

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

1. The Committee considered, at its eleventh session, the second periodic reports submitted by the United Kingdom of Great Britain and Northern Ireland (dependent territories) on articles 10 to 12 (E/1986/4/Add.27 and E/1986/4/Add.28) and on articles 13 to 15 (E/1990/7/Add.16) of the Covenant as well as additional information (E/1989/5/Add.9) submitted pursuant to the consideration of the second periodic report of the United Kingdom concerning rights covered by articles 10 to 12 of the Covenant. The Committee considered those reports at its 33rd and 34th meetings held on 23 November 1994, and paid particular attention to the specific situation of Hong Kong at its 34th, 36th and 37th meetings held on 23, 24 and 25 November 1994. After having considered those reports, the Committee adopted 1/ the following concluding observations:

Introduction

2. The Committee notes that the reports submitted by the State party have been prepared in accordance with the Committee's guidelines. It welcomes the presence of a high level delegation composed of representatives from the United Kingdom of Great Britain and Northern Ireland and from Hong Kong. It notes with satisfaction that the information submitted in the reports and that

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1/ At the 53rd meeting (eleventh session), held on 7 December 1994.

provided by the delegation in reply to both written and oral questions enabled the Committee to obtain a comprehensive view of the extent of the State party's compliance with its obligations under the International Covenant on Economic, Social and Cultural Rights. The Committee also appreciates the submission of written replies to its list of issues. The Committee considers that the content and form of the dialogue established between the delegation and the Committee was, in many respects, highly satisfactory.

3. The Committee was especially appreciative of the constructive manner in which the delegation referred to and responded to the contributions of non-governmental organizations to the Committee's review of the implementation of the Covenant in Hong Kong.

PART ONE

Implementation of articles 10 to 12 and 13 to 15 of the Covenant in the United Kingdom of Great Britain and Northern Ireland and its Dependent Territories (with the exception of Hong Kong)

A. Positive aspects

4. The Committee welcomes the enactment in recent years of a number of laws which aim to promote the safeguarding and enjoyment of the rights guaranteed by the Covenant. It appreciates, in particular, the adoption of the Education Act 1993 and of the Code of Practice on the Identification and Assessment of Special Educational Needs and notes that the latter was issued in May 1994 to identify and assess children with special educational needs and provide for their education whenever possible in mainstream schools. It also welcomes the Local Government and Housing Act 1989 and the Homelessness Code of Guidance for Local Authorities which aim at overcoming certain difficulties in the implementation of the right to housing as specified in article 11 of the Covenant.

5. The Committee takes note with interest of the efforts undertaken by the Government to promote self rule in the various Dependent Territories and to enhance public awareness of and ability to exercise economic, social and cultural rights.

B. Factors and difficulties affecting the implementation of the Covenant

6. The State party reported no specific factor or difficulty affecting the implementation of the Covenant. The Committee, however, notes that notwithstanding the absence of such an information in the reports it is clear that certain economic and social difficulties continue to be faced by the most vulnerable segments of society, partly as a result of the imposed budgetary constraints.

7. The Committee notes that while the small size and therefore limited human and material resources of most of the Dependent Territories might result in certain difficulties, the fact remains that the rights recognized in the Covenant must be fully implemented even if this requires additional efforts and resources from the United Kingdom Government.

C. Main subjects of concern

8. The Committee regrets that it has not been felt possible to include in the reports submitted to the Committee concerns and views expressed by the public and non-governmental organizations, including in the relevant territories. In that regard, the Committee recalls that the meaning of the reporting procedure is precisely to focus attention and debate on the implementation of the rights guaranteed by the Covenant. Similarly, judges and other members of the legal profession have not given sufficient consideration to the importance of this Covenant within domestic law. The Committee considers that availability of the reports in the library of the House of Commons is insufficient to satisfy the interest of a public at large.

9. The Committee notes the concern expressed to it about the situation of Gibraltar in relation to the right to self-determination recognized in article 1 of the Covenant and calls upon all parties to the existing situation to ensure full respect for all the rights recognized in the Covenant in relation to future developments concerning Gibraltar.

10. The Committee takes note with concern that insufficient measures have been taken to address the apparent disparities in employment patterns and opportunities of certain minority groups and between men and women. In the latter regard, it is regretted that women are still employed disproportionately in lower paid occupations.

11. The Committee is concerned about difficulties faced in the implementation of article 11 of the Covenant. In this context, it regrets that a large number of households have experienced harassment or illegal eviction and notes that the national housing policy is not adequate to address this problem which particularly affects private tenants who are single parents, have low incomes or, in general, are among the most vulnerable groups of society. The Committee also notes with concern that serious difficulties continue to be faced regarding the enforcement of improvements to unsafe housing in England and Wales as well as in the handling by the authorities of the growing problem of homelessness.

12. The Committee considers the situation of disadvantaged groups in the education system to be of particular concern. It specifically notes the grave disparities which appear to prevail in the level of education depending on the social origin of the pupil. Regional differences in the quality of the education provided to children is also a matter of concern.

13. The Committee regrets that insufficient measures have been taken towards the development of a universal pre-school education scheme. It is concerned at the relatively low proportion of 16 to 18 years old individuals who continue in full time education, the large number of children who do not complete their schooling and the growing reliance in the context of the education system reform upon voluntary contributions by parents. The Committee also regrets the lack of sufficient opportunities available to persons with disabilities to pursue their right to education within the mainstream.

D. Suggestions and recommendations

14. The Committee recommends that appropriate measures be taken to disseminate information on the rights guaranteed under the Covenant to all sectors of the society, particularly to judges, civil servants, social workers and members of other professions concerned by its implementation. The Committee encourages the United Kingdom of Great Britain and Northern Ireland to take into account the General Comment No. 1 of the Committee in the preparation of its next periodic report, in order to enhance the transparency of government policy-making with respect to economic, social and cultural sectors of the society.

15. The Committee underlines that efforts should be taken to identify the needs of disadvantaged groups in the field of education and to draw on the results of any studies or reviews in the development of policy initiatives to respond to the needs of such groups. The Committee also recommends that priority should be given to expand the access to pre-school education and to develop basic skill programmes in reading, writing and numeracy, particularly to the benefit of children up to the age of 7 years. Appropriate school training should also be made available to long-term unemployed persons.

16. In view of the existing situation of older persons and of persons with disabilities the Committee urges the Government to make an enhanced effort to assess the needs of these groups in relation to their rights under articles 13 to 15 of the Covenant.

17. The Committee urges the State party to improve its monitoring of the problem of inadequate housing and to develop more active and focused measures to improve the situation. In this connection, it draws the attention of the State party to the provisions of its General Comment No. 4.

PART TWO

Implementation of articles 10 to 12 and 13 to 15 of the Covenant in Hong Kong

A. Positive aspects

18. The Committee notes with interest that Hong Kong has prospered economically to a degree that places considerable material resources at the disposal of the Government to enhance the enjoyment of economic, social and cultural rights in Hong Kong. The Committee acknowledges the significant number of measures that the Government has undertaken in relation to the rights enshrined in the Covenant.

19. The Committee notes with satisfaction the efforts made by the Hong Kong Government to make available to the Hong Kong community the text of the Covenant and the report submitted to the Committee. It welcomes the commitment made that in future, the draft report will be circulated for public comment.

20. The Committee welcomes the terms in the Sino-British Joint Declaration and the Basic Law which affirm that the provisions of the Covenant will remain in force and continue to apply to Hong Kong after 1997. The Committee also

welcomes the incorporation of the Covenant as a justiciable constitutional guarantee in article 39 of the Basic Law. While the Committee realizes that the continuation of reporting in respect of Hong Kong after 1997 may pose some legal and technical problems, it emphasizes the very important role played by reporting in relation to the protection of economic, social and cultural rights. The Committee is aware that there are various options by which these problems may be overcome. On this basis the Committee affirms its willingness and indeed its strong wish to receive reports on Hong Kong from the People's Republic of China or, if the authorities so decide, directly from the Hong Kong Special Administrative Region. In the meantime, especially in view of the commitments entered into in the Joint Declaration, the Committee hopes that the People's Republic of China will accede to the Covenant.

B. Factors and difficulties affecting the implementation of the Covenant

21. The Committee notes that uncertainties arising from the anticipated transfer of sovereignty to China in 1997, have apparently resulted in the reluctance on the part of the Hong Kong Government, to seek to its maximum capacity, the protection and promotion of the economic, social and cultural rights of its constituents.

C. Principal Subjects of Concern

22. The Committee regrets that the provisions of the International Covenant on Economic, Social and Cultural Rights are not incorporated into Hong Kong domestic law unlike the International Covenant on Civil and Political Rights. The Committee finds unacceptable the view expressed by the Government that the rights enshrined in the International Covenant on Economic, Social and Cultural Rights are "different in nature" from civil and political rights and therefore not capable of being the subject of an enforcement procedure under domestic law.

23. The Committee is concerned that the relatively low-level of awareness of, and interest in, international human rights law on the part of the judiciary results in the inadequate consideration of the provisions of the Covenant in judicial decision-making to the extent that is permitted by the common law system.

24. The Committee expresses its concern that in spite of recent Government initiatives to introduce legislation concerning non-discrimination in relation to sex and disability, there is an absence of comprehensive legislation providing protection against discrimination on the grounds referred to in article 2 of the Covenant. The Committee notes with concern that the Government's proposed legislation on sex discrimination includes a number of exclusions and exemptions - in particular the so-called small-house policy - which discriminate against women.

25. The Committee is concerned at the Government's clear objection to the establishment of a human rights commission.

26. The Committee is particularly disturbed at the problem of split families in Hong Kong, especially where it concerns spouses who are forced to live apart from each other and children who are separated from parents and

siblings. The Committee is of the view that this situation is the result of Hong Kong's present immigration law, and considers that the separation of families is inconsistent with the obligations under article 10 of the Covenant.

27. The Committee is also concerned that in the case of Hai Ho-Tak, it has received conflicting explanations as to the reasons for the separation of the child from his parents and as to which authorities are in a position to resolve the problem. The Committee finds these reasons unconvincing and maintains its concern that unduly broad bureaucratic reasons have been used as a justification for a measure which is not compatible with the rights recognized in article 10. The suggestion that the child's parents should apply for a one-way permit would not appear to be an adequate solution given the very lengthy delay that would result. The Committee urges the Government to again reconsider its response to this case. It also notes that no compelling reason has been offered by the Government for its refusal to provide a statutory right of appeal in immigration cases which involve exceptional circumstances of a humanitarian nature and urges that this principle should also be reconsidered.

28. The Committee is deeply concerned by the information it has received concerning the treatment of Vietnamese asylum-seekers in Hong Kong. It is particularly concerned about the situation of the children and is alarmed by the statements made by the Government that these children have no entitlement to the enjoyment of the right to education or to other rights in view of their status as "illegal immigrants". The Committee considers the situation inconsistent with obligations set forth in the Covenant.

29. The Committee expresses its concern about the legal and social position of foreign employees known as domestic helpers in Hong Kong. It considers that these workers' economic, social and cultural rights are seriously impaired by the so-called two-week rule which provides that a worker may neither seek employment nor stay more than 2 weeks in Hong Kong after the expiration of original employment; by the fact that maximum working hours are not set; and by the discriminatory practice of not being allowed to bring their families to Hong Kong, while professional migrant workers from developed countries are allowed to do so.

30. The Committee deplores the plight of persons - most of whom are elderly - living in sub-human conditions in "cage homes", and considers unacceptable the inaction of the Hong Kong Government despite abundant financial resources at its disposal.

31. The Committee notes with concern that the present level of social security payments available to the elderly appears to be insufficient to permit them to enjoy fully their rights under the Covenant. It is particularly concerned about the health and social problems facing elderly people who are totally dependent on Comprehensive Social Security Assistance payments.

D. Suggestions and Recommendations

32. The Committee urges the Government of the United Kingdom to inform the Committee as soon as possible of the modalities arrived at in agreement with the Government of China by which the reporting obligations under the Covenant will continue after 1997.

33. The Committee enjoins the Government of Hong Kong to establish procedures to allow an appropriate body to adjudicate on complaints of infringement of the rights under the Covenant, and to allow the Hong Kong legislature to consider the desirability of establishing a human rights commission.

34. The Committee recommends that competent authorities responsible for continuing legal education for the judiciary, take active steps to ensure that Hong Kong judges are appropriately updated on a continuing basis, on developments in international human rights law.

35. The Committee recommends that the Government should take immediate steps to introduce a comprehensive anti-discrimination legislation especially in relation to all forms of discrimination against women.

36. The Committee recommends a review of the existing immigration policy of Hong Kong with a view to amending the provisions which result in split families.

37. The Committee urges the Hong Kong Government to take immediate steps to ensure that children in refugee camps and those released from them, are accorded full enjoyment of the economic, social and cultural rights guaranteed to them under the Covenant. The Committee also recommends a closer cooperation with volunteer organizations and the United Nations High Commissioner for Refugees.

38. The Committee recommends the repeal of the two-week rule and a review of the employment conditions of foreign domestic helpers to provide the full enjoyment of their rights under the Covenant.

39. The Committee urges the Government to take immediate steps, as a matter of high priority, to eradicate the phenomenon of "cage homes", and to ensure that those presently living in such accommodations are provided with adequate and affordable rehousing. The Committee also urges the Government to seriously consider the embodiment into domestic law of the right to housing.

40. The Committee recommends a review of the existing social security system as soon as possible, with a view to addressing the inadequacies of benefits for the older persons.

41. The Committee considers that Hong Kong is in the fortunate position of having sufficient resources to address its present inadequacies in relation to its obligations under the Covenant, and the Committee urges it to do so as soon as possible.